

August 9, 2007

(B-19J)

Thomas Sorel, Division Administrator  
Federal Highway Administration - Minnesota Division  
175 Fifth Street East - Suite 500  
St. Paul, Minnesota 55101-2904

**RE: Tier 1 Draft Environmental Impact Statement, TH 41 Minnesota River Crossing, From US Highway 169 to New US Highway 212, Scott County and Carver County, Minnesota. CEQ No. 20070257**

Dear Mr. Sorel:

The United States Environmental Protection Agency Region 5 (U.S. EPA) has reviewed the above-referenced Tier 1 Draft Environmental Impact Statement (DEIS) pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act.

The Minnesota Department of Transportation (MnDOT) and the Federal Highway Administration (FHWA) have identified a need to build a new limited-access Trunk Highway 41 (TH 41) river crossing over the Minnesota River between US 169 and new US 212 in Scott and Carver Counties, Minnesota. At this time, the proposed project is not programmed for construction within the next 20 years. However, due to rapid development occurring in the project study area, FHWA and MnDOT have identified a need to preserve a crossing corridor, as soon as possible. FHWA and MnDOT are using a tiered environmental review process for this project. The Tier 1 EIS will identify the corridor for preservation. The Tier 2 EIS will evaluate the alignment and design for construction.

In addition, the U.S. Army Corps of Engineers (Corps), a cooperating agency on this Tiered EIS, is conducting a Clean Water Act (CWA) Section 404 review for the TH 41 project concurrently with the tiered NEPA EIS process as identified in the Corps' Special Public Notice, issued July 13, 2007. The Tier 1 DEIS does not identify that this project is going through a Tiered EIS NEPA/CWA Section 404 concurrent review (Tiered NEPA/404 merger process) or provide an explanation of the Tier 1 NEPA/404 concurrent review process for this project. We recommend the Tier 1 FEIS include this information as well as the results of the Tier 1 NEPA/404 concurrent review process to date.

The Tier 1 DEIS identifies and provides a good discussion and evaluation of the many complex issues and environmental impacts associated with the various Tier 1 DEIS

alternatives. U.S. EPA understands that all possible river crossing locations present difficulties due to the large number and variety of special resources located throughout the study area. We appreciate the efforts FHWA and MnDOT have made to date in developing alternatives to avoid and minimize impacts to the various study area resources. This includes but is not limited to FHWA's and MnDOT's intent that the new TH 41 roadway will bridge the Minnesota River and its entire 100-year floodplain.

The No-build and six action alternative corridors [i.e., W2, C2, C2A, E1, E1A and E2] are presented and evaluated in the Tier 1 DEIS. Since the Tier 1 DEIS does not identify a preferred alternative, U.S. EPA assigned a rating to each action alternative. We rate the Tier 1 DEIS, EO-2 (Environmental Objections – Insufficient Information), based on the most severe rating assigned to an alternative, as explained below. Enclosed is a copy of our summary ratings sheet.

We rate Alternatives E1A and E2 an “EO” (environmental objections) and would object to the selection of either alternative as the Tier 1 Final EIS (Tier 1 FEIS) preferred alternative corridor. The reason for this rating is due to direct and indirect impacts to calcareous fen components (CFC) within the Seminary Fen Wetland Complex (SFWC) and the low probability of successfully mitigating for these impacts. Alternatives E1A and E2 also have the potential to impact the quality and quantity of ground water within SFWC. In addition, there are other feasible Tier 1 alternatives that have no direct impact on calcareous fens or the SFWC, and whose associated wetland impacts would have a greater likely of being successfully mitigated.

We rate Alternatives W2, C2, C2A and E-1 “EC - 2” (environmental concerns – insufficient information). Alternatives W2, C2 and C2A would not impact calcareous fens or the SFWC. However, they would impact a variety of important resources in the study area, including but not limited to, 9.0 to 16.1 acres of non-calcareous fen wetlands. Of the three alternatives, Alternative C2 has the least amount of direct wetland impacts (10.9 acres). Alternative C2 would impact one historic property. Wetland mitigation for these alternatives would have a greater chance for success than for Alternatives E1A and E2.

While Alternative E1 would not directly impact a CFC, it would directly impact the western edge of the SFWC and approximately 9.0 acres of non-calcareous wetlands outside the SFWC. It also has a slight potential to impact groundwater levels within SFWC. Alternative E1, like Alternatives E1A and E2, has the potential to take more than 100 housing units in areas identified as Environmental Justice (EJ) communities. Due to the rapidly developing nature of the study area, it is uncertain whether enough future affordable housing will be available in the study area for the number of relocations that would be needed for any of the Tier 1 DEIS “E” alternatives. Consequently, we recommend Alternative E1 not be identified as the Tier 1 FEIS Preferred Alternative unless the Tier 1 FEIS includes an adequate conceptual wetland mitigation plan specifically designed for Alternative E1 and the Tier 1 FEIS provides assurances that suitable affordable housing in the study area will be available if the future Tier 2 EIS determines it is still needed.

In any case, because the study area is forecasted to rapidly develop, U.S. EPA wants to see some up front mitigation for the Tier 1 EIS preferred alternative identified. The proper Tier 1 mitigation would include a conceptual mitigation plan for the wetland impacts expected with the Tier 1 preferred alternative. The wetland conceptual mitigation plan should be completed now, as the FHWA/MnDOT/Corps and resource agencies are conducting our reviews of the proposal as a merged NEPA/404 concurrence process.

U.S. EPA would like to see the following identified in a conceptual mitigation plan:

- Potential locations with assurances to set the land aside for the specific purpose of wetland mitigation for this TH 41 project.
- A compensatory mitigation ratio of at least 1.5:1, depending on the quality of the wetlands destroyed.
- Acknowledgment that the ratio might be as high as 10:1 for forested wetland impacts or even higher if calcareous fens are involved.

The area chosen for mitigation should ideally provide opportunity for wetland restoration, as this has a higher success rate than wetland creation. The area chosen should have the proper hydrology and soils to continually support a thriving wetland community. Ideally the mitigation area chosen should be within the same watershed where the impacts occur and provide for in-kind mitigation.

We look forward to further discussions with FHWA, MnDOT, the Corps and other resource agencies concerning the choice of a Tier 1 preferred alternative corridor and adequacy of a conceptual mitigation plan through the Tiered NEPA/404 merger process and prior to publication of the Tier 1 FEIS.

If you have any questions, please contact Virginia Laszewski of my NEPA Implementation staff at (312) 886-7501. In addition, Janice Cheng, Wetlands and Watersheds Branch, may be reached at (312) 353-6424.

Sincerely,

/s/ (Kenneth Westlake, acting for)

Tinka G. Hyde, Director  
Office of Enforcement and Compliance Assurance

Enclosure: Summary of Rating Definitions

cc: Robert Whiting, U.S. Army Corps of Engineers, ATTN: OP-R/JJY,  
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